

FIRST REGULAR SESSION

# HOUSE BILL NO. 915

## 97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAHR.

2110L.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To amend chapter 285, RSMo, by adding thereto one new section relating to the employee reclassification act.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 285, RSMo, is amended by adding thereto one new section, to be known as section 285.080, to read as follows:

**285.080. 1. (1) This section shall be known and may be cited as the "Employee Reclassification Act".**

**(2) As used in this section, the term "department" means the Missouri department of labor and industrial relations.**

**2. The department shall promulgate a rule providing a clear and concise definition of what is the definition of an independent contractor and procedures by which the department may change an individual's classification from an independent contractor to an employee, as provided in this section.**

**3. Notwithstanding any other provision of law to the contrary, for purposes of chapters 287 and 288 and sections 143.191 to 143.265, it shall be presumed, absent conclusive evidence to the contrary, that funds paid to:**

**(1) A limited liability company, corporation, or entity formed under the applicable assumed name certificate statute organized under chapter 347 or other applicable state statute;**

**(2) An individual licensed by the state or appropriate local authority, who provides services to multiple customers and whose services are not the same as the services provided by a customer; or**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18           **(3) A licensed attorney in the state of Missouri or an attorney licensed in another**  
19 **state who is providing legal services;**

20  
21 **are funds paid to an independent contractor and not to an employee.**

22           **4. An individual or employer may request an opinion letter from the department**  
23 **whether a particular individual should be classified as an employee or an independent**  
24 **contractor. If the employer classifies an individual as an independent contractor based**  
25 **upon the recommendation in the opinion letter, the department shall not impose a fine or**  
26 **additional employment taxes if it subsequently determines the individual is an employee.**

27           **5. If the department conducts an audit and concludes that an individual classified**  
28 **as an independent contractor should be reclassified as an employee, the employer shall be**  
29 **given a period of sixty days to comply with the finding and, in the absence of fraud, shall**  
30 **not be liable for any assessment of employee tax, interest, or fines for the misclassification.**

31           **6. The department shall hereinafter offer the same relief to Missouri employers as**  
32 **afforded to employers by Section 530 of the Internal Revenue Code of 1986, as amended.**

33           **7. If the department's finding is appealed, the fine and the assessment for interest**  
34 **levied against an employer for misclassifying an employee as an independent contractor**  
35 **shall be tolled while the finding of the department is appealed, barring the absence of fraud**  
36 **on the part of the employer.**

37           **8. The rule shall be published in accordance with chapter 536. The public shall be**  
38 **provided a period of time to comment on the proposed rule, and the department shall take**  
39 **such comments into consideration prior to issuing a final rule. A copy of the final rule, as**  
40 **well as an explanation of the changes contained therein, shall be mailed to every employer**  
41 **registered with the department and the department of revenue.**

42           **9. All pending investigations of employee reclassification, including all those not**  
43 **finalized by the Missouri appellate court, shall cease and be enjoined immediately and**  
44 **permanently. All employers shall be given notice of the department definition of employee**  
45 **classification after the requisite public comment period has ended and such employers shall**  
46 **be given one hundred eighty days to comply with such definition or definitions.**

47           **10. If an audit of an employer by the department results in the reclassification of**  
48 **a person or entity from an independent contractor to an employee and upon review, appeal**  
49 **or court appeal action, the employer prevails, the employer shall be awarded reasonable**  
50 **fees and expenses, including attorney fees.**

51           **11. Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
52 **created under the authority delegated in this section shall become effective only if it**  
53 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**

54 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**  
55 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
56 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
57 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2013,**  
58 **shall be invalid and void.**

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